



7050-01

## **LEGAL SERVICES CORPORATION**

### **45 CFR Part 1603**

#### **State Advisory Councils**

**AGENCY:** Legal Services Corporation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rulemaking would remove the Legal Services Corporation's (LSC) regulation on state advisory councils. LSC believes this action is appropriate because the state advisory councils are no longer active and their oversight functions have been replaced adequately by other offices and processes established by Congress or LSC. Executive Orders 13563, "Improving Regulation and Regulatory Review," and 13771, "Reducing Regulation and Controlling Regulatory Costs," direct agencies to review their existing regulations and repeal or revise any that are obsolete or unnecessarily burdensome. Although LSC is not an agency of the Federal government subject to either executive order, LSC regularly reviews its regulations and has determined that this regulation can be eliminated.

**DATE:** Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments by any of the following methods:

- Federal Rulemaking Portal: Follow the instructions for submitting comments.
- Email: [lscrulemaking@lsc.gov](mailto:lscrulemaking@lsc.gov). Include "Part 1603 Rulemaking" in the subject line of the message.
- Fax: (202) 337-6519.

- Mail: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007, ATTN: Part 1603 Rulemaking.
- Hand Delivery/Courier: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007, ATTN: Part 1603 Rulemaking.

Instructions: LSC prefers electronic submissions via email with attachments in Acrobat PDF format. LSC will not consider written comments sent to any other address or received after the end of the comment period.

**FOR FURTHER INFORMATION CONTACT**: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007; (202) 295-1563 (phone), (202) 337-6519 (fax), or sdavis@lsc.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Background.**

Section 1004(f) of the Legal Services Corporation Act of 1974 required that “within six months after the first meeting of the Board, the Board request the Governor of each State to appoint a nine-member advisory council for each state.” 42 U.S.C. 2996c(f). If ninety days elapsed without the Governor’s appointing the advisory council, then “the Board [was] authorized to appoint such a council.” Id. LSC implemented this statutory requirement in 1975 at 45 CFR part 1603.

The state advisory councils’ primary duty was to notify LSC of any “apparent violation” by a recipient. 45 CFR 1603.5. LSC defined “apparent violation” as “a complaint or other written communication alleging facts which, if established, constitute a violation of the [LSC] Act, or any applicable rules, regulations or guidelines promulgated pursuant to the Act.” Id. 1603.2(b).

LSC met the requirements of section 1004(f) of the LSC Act by requesting state governors to appoint state advisory councils within the period established by the Act and part 1603. In 1976, 46 state advisory councils were in existence, but later reports reflect that many of these councils rarely, if ever, met. Letter from Suzanne B. Glasow, Senior Counsel for Operations and Regulations, Office of General Counsel, to Mike Sims, Office of Rep. Pete Laney at 1 (Sept. 19, 1989). By 1983, only six state advisory councils appeared to be operational and by 1989, only Colorado and Indiana had functioning state advisory councils. Id. To the best of LSC's knowledge, there currently are no active state advisory councils. Furthermore, LSC has no records of complaints forwarded from the state advisory councils.

## **II. History of This Rulemaking.**

In 2014, LSC's Office of the Inspector General (OIG) recommended that LSC either ensure that the state advisory councils are established and operational or rescind part 1603. LSC proposes to rescind part 1603 for four reasons: (1) LSC complied with the requirements of section 1004(f) of the LSC Act by requesting state governors to appoint state advisory councils within the period established by the Act and part 1603; (2) section 1004(f) of the LSC Act and part 1603 provide LSC with discretion to exercise or not exercise the option to appoint state councils; (3) to LSC's knowledge, there are no functioning state advisory councils; and (4) there are now numerous oversight mechanisms that fulfill the function of the state advisory councils.

At its January 2015 meeting, the Operations and Regulations Committee (Committee) of LSC's Board of Directors (Board) recommended including the repeal of part 1603 on LSC's regulatory agenda, but made the initiative a low priority.

On January 30, 2017, the President signed Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs." Through this Executive order, the President directed the

heads of executive departments and agencies to identify at least two prior regulations to be repealed for each new regulation issued. By operation of the LSC Act, LSC is not an executive department or agency subject to the Executive order. 42 U.S.C 2996d(e). Consistent with the intent of the Executive order to reduce unnecessary regulations, however, LSC prioritized the repeal of part 1603.

Prior to initiating rulemaking, LSC conducted an analysis of the oversight mechanisms that have developed since the LSC Act was passed in 1974. LSC determined that the state advisory councils' oversight functions have been replaced adequately by other offices and processes established by Congress or LSC since 1974. Complainants not only have more audiences – including LSC's OIG, LSC's Office of Compliance and Enforcement (OCE), and state bodies – for their complaints, but they also have more vehicles for filing complaints, including by phone, postal mail, email, online, and through grantee grievance procedures. Furthermore, the OIG, OCE, and state bodies go beyond the state advisory committees' narrow role of collecting alleged violations by also investigating the allegations and using various tools to ensure grantee compliance. LSC's analysis of these existing oversight mechanism is covered in greater detail in the Justification Memorandum for Rulemaking to Rescind 45 CFR part 1603 - State Advisory Councils, available at [www.lsc.gov/rulemaking](http://www.lsc.gov/rulemaking).

On April 23, 2017, the Committee approved Management's proposed 2017-2018 rulemaking agenda, which included rescinding 45 CFR part 1603 as a priority rulemaking item. On October 15, 2017, the Committee voted to recommend that the Board authorize LSC to begin rulemaking on part 1603. On October 17, 2017, the Board authorized LSC to begin rulemaking. On January 21, 2018, the Committee voted to recommend that the Board authorize publication of

this NPRM. On January 23, 2018, the Board authorized publication of the NPRM with a 30-day comment period.

### **III. Discussion of the Proposed Changes.**

LSC proposes to remove part 1603. In an NPRM published elsewhere in this issue of the Federal Register, LSC proposes to add to part 1603 a regulation governing requests for testimony and subpoenas for documents in cases to which LSC is not a party.

#### **List of Subjects in 45 CFR part 1603**

Advisory committees; Legal services.

For the reasons discussed in the preamble and under the authority of 42 U.S.C. 2996g(e), LSC proposes to remove 45 CFR part 1603.

#### **PART 1603 – [REMOVED AND RESERVED]**

Dated: January 25, 2018

Stefanie K. Davis

Assistant General Counsel.

[FR Doc. 2018-01733 Filed: 1/31/2018 8:45 am; Publication Date: 2/1/2018]